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July 13, 2007

FILED/ACCEPTED

JUL 13 2007

Federal Communications Commission
Office of the Secretary

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation in WC Docket No. 05-337

Dear Ms. Dortch:

Yesterday Mr. Joseph Young, Ms. Anne Sokolin-Maimon and I, on behalf of Mediacom Communications Corporation and MCC Telephony [collectively "Mediacom"], met with John Hunter in Commissioner McDowell's office regarding the forbearance and waiver petitions filed by Iowa Telecommunications Services, Inc. in the above-referenced proceeding. The attached submission, which was distributed at the meeting, summarizes the points raised by Mediacom.

If you have any questions, please do not hesitate to contact me by telephone at 202-342-8620.

Respectfully submitted,


Robert J. Aamoth

Attachment

cc: John Hunter

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**SUBMISSION OF MEDIACOM COMMUNICATIONS AND MCC TELEPHONY
REGARDING FORBEARANCE/ WAIVER PETITIONS FILED BY IOWA TELECOM
WC DOCKET NO. 05-337**

I. THE IOWA TELECOM PETITIONS DO NOT OFFER A SUFFICIENT LEGAL BASIS FOR THE RELIEF IT SEEKS

A. Iowa Telecom is a rural ILEC seeking to be affirmatively reclassified as a non-rural ILEC solely for USF distribution purposes.

B. The FCC cannot achieve that result through Section 10 forbearance authority. Forbearing from applying rural ILEC regulations will not result in Iowa Telecom qualifying as a non-rural ILEC. *E.g., Federal-State Joint Board on Universal Service*, 20 FCC Red 19731, n.4 (2005) (NPRM) (“[t]he term ‘non-rural carriers’ refers to incumbent local exchange carriers that do not meet the statutory definition of a rural telephone company”). Forbearance does not change the fact that Iowa Telecom meets the statutory definition of a rural telco.

C. Forbearance means “to desist from” or “cease.” *AT&T, Inc. v. FCC*, 452 F.3d 830, 834 (D.C. Cir. 2006). The FCC cannot use forbearance authority to both remove a carrier from one classification and affirmatively place it into another classification. Iowa Telecom is asking the FCC to improperly use its forbearance authority as a substitute for notice-and-comment rulemaking.

D. The FCC’s generic waiver authority under FCC Rule 1.3 also cannot reach the result requested by Iowa Telecom. Iowa Telecom cannot identify any agency rule that, if waived, would result in Iowa Telecom qualifying as a non-rural ILEC.

E. Iowa Telecom needs the FCC to adopt new rules in order to achieve the result it wants. The FCC has a pending rulemaking proceeding (CC Docket No. 96-45 & WC Docket No. 05-337) in which it is considering the policy issue raised by Iowa Telecom. It would be arbitrary, unjust and harmful to prejudge that rulemaking proceeding by reclassifying Iowa Telecom as a non-rural ILEC for USF purposes.

F. Iowa Telecom has offered no mechanism to “true up” its USF subsidies in the event the FCC adopts a new permanent rule that would result in lower USF payments for Iowa Telecom than it would receive under the current rules applicable to non-rural ILECs.

II. THE IOWA TELECOM PETITION WOULD BURDEN THE USF PROGRAM AND IS CONTRARY TO THE PUBLIC INTEREST

A. Iowa Telecom cannot meet the “public interest” test because granting its petition would increase the size of the USF by an estimated \$22.2 million. Given serious concerns expressed by the FCC and others over the size of the USF, there is no justification for bestowing this amount on Iowa Telecom.

B. The Iowa Telecom petition is flatly inconsistent with the proposal to cap USF distributions for competitive ETCs. It is inherently arbitrary, and would undermine competition, to subject new entrants in Iowa to a USF cap while Iowa Telecom receives a \$22.2 million windfall through the equivalent of a rule change.

C. There is nothing unique about Iowa Telecom vis-à-vis the Federal USF program. Other rural ILECs would seek the same relief, and the total USF burden would far exceed \$22.2 million.

D. It is improper under current FCC rules for Iowa Telecom to use USF funds to build broadband infrastructure. For example, Qwest recognized the need for a new rule to use USF funds for this purpose when it proposed to free-up USF subsidies for broadband build-out. *See Ex Parte* Letter from M. Newman, Qwest, to M. Dortch, FCC (June 29, 2007) (CC Docket No. 96-45).

III. IOWA TELECOM HAS NOT MET ITS BURDEN OF PROOF

A. Iowa Telecom offers no evidence justifying granting the petition. Iowa Telecom boasts (App. at 16 n.52) that it has invested many tens of millions of dollars in what it describes as an “aggressive network investment plan” since 2000. According to the IUB, 95% of rural communities in Iowa now have high-speed Internet access. Iowa Telecom has distributed significant dividends to shareholders each year (*e.g.*, \$50 million in 2005), and it currently pays a dividend in excess of 7%. Iowa Telecom is capable of fully supporting infrastructure development under its current business model without being reclassified as a non-rural ILEC.

B. Iowa Telecom has not identified the specific infrastructure it would build-out with this subsidy, nor shown that it lacks the financial ability to build-out infrastructure without this subsidy.

C. In 2002 the FCC granted access charge forbearance to Iowa Telecom, which Iowa Telecom said would “fully” address its need for additional funds for infrastructure build-out. In 2003 Iowa Telecom benefited from special legislation (the Iowa Broadband Initiative) permitting it to impose a \$2/line per month charge on subscribers for two years to fund broadband infrastructure build-out. This new forbearance request is a third bite at the apple.

D. New entrants have invested many millions of dollars in their own infrastructure in Iowa without any USF subsidies. ***Mediacom has invested over \$300 million to build new infrastructure in Iowa since 2001 without the benefit of any USF subsidies. Mediacom fulfilled its commitment to local franchise authorities in Iowa to build-out broadband infrastructure within 36 months, in many cases in less than half the promised time.***

E. Iowa Telecom paid too much for GTE's Iowa exchanges in 2000. Iowa Telecom is now attempting to pass-off to unsuspecting third parties – those parties who are required to support the Federal USF program – the financial burden of that decision. Iowa Telecom offered this argument once before in an effort to raise local rates, and the Iowa Utilities Board rejected it. The FCC should reject it as well.

F. Giving more USF subsidies to Iowa Telecom will not reduce the rates paid by Iowa consumers. Iowa Telecom concedes (at 4) that “[e]nd-user customer rates are generally set by state commissions without regard for federal universal service funding.” Iowa Telecom has dropped the price of its bundled service package in territories where it faces competitive entry (*e.g.*, \$5.95/month), and still claims that these rates are above cost. Its rates in other territories for the same bundle (*e.g.*, \$19/month) reflect monopoly pricing. Iowa Telecom establishes service rates based on factors such as market conditions and IUB regulation, not USF subsidies.

IV. IOWA TELECOM WILL USE THE \$22 MILLION WINDFALL AS A WAR CHEST TO UNDERMINE COMPETITIVE ENTRY IN IOWA

A. Sprint Nextel, Mediacom, and other entities have experienced first-hand a consistent pattern of anticompetitive conduct by Iowa Telecom in Iowa.

B. Iowa Telecom successfully blocked Mediacom's attempt to enter the Iowa market through various tactics, including foot-dragging, costly litigation. Iowa Telecom also refused to enter into an interconnection agreement with Mediacom until ordered to do so by the IUB, after which Iowa Telecom challenged the IUB's authority to make the decision. The IUB ruled Iowa Telecom's conduct to be “obstructionist” and warned that Iowa Telecom could face penalties.

C. Iowa Telecom's persistent, unattractive behavior has harmed Iowa consumers by delaying new facilities-based entry, preventing new broadband infrastructure build-out, reducing competitive choices, raising prices, and perpetuating Iowa Telecom's market power.